

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

BLUE SPIKE, LLC,

Plaintiff,

V.

TEXAS INSTRUMENTS, INC.,

Defendant.

BLUE SPIKE, LLC,

Plaintiff,

V.

ZEITERA, LLC,

Defendant.

Civil Action No. 6:12-CV-499 LED

JURY TRIAL DEMANDED

Civil Action No. 6:12-CV-568 LED

JURY TRIAL DEMANDED

**DECLARATION OF BRYAN KOHM IN SUPPORT OF
DEFENDANT ZEITERA, LLC'S MOTION TO TRANSFER VENUE TO
THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA UNDER 28 U.S.C. § 1404(a)**

I, Bryan Kohm, hereby declare as follows:

1. I am an attorney admitted to practice in the State of California and am an associate with the law firm of Fenwick & West LLP, counsel of record for AOptix Technologies, Inc. (“AOptix”). Except where otherwise stated, I have personal knowledge of the matters set forth below, and if called to testify, I could and would competently do so.

2. Attached hereto as **Exhibit 1** is a true and correct copy of an Information Disclosure Statement By Applicant filed on April 17, 2007 in the prosecution of U.S. Patent Application Serial No. 09/657,181 (the “‘181 Application”).

3. Attached hereto as **Exhibit 2** is a true and correct copy of the face sheets to U.S. Patent Nos. 6,523,113, 5,530,751, 6,978,370, 6,823,455, 6,668,246, 6,282,650, 5,633,932; 6,785,815, 5,943,422, 6,381,747, 6,049,838, 6,457,058, 4,424,414, 4,200,770, and 4,218,582, which were cited during the prosecution of U.S. Patent Nos. 7,346,472, 7,660,700, 7,949,494, and 8,214,175 (collectively, the “Asserted Patents”).

4. Attached hereto as **Exhibit 3** is a true and correct copy of the face sheets to U.S. Patent Nos. 5,646,997, 5,912,972, 6,233,684, 6,453,252, 6,405,203, 6,665,489, and 5,629,980, which were cited during the prosecution of the Asserted Patents.

5. The following are assignees residing the Northern District of California in the patents identified in **Exhibits 2 and 3**: Apple Computer, Inc. (Cupertino), Cisco Technology, Inc. (San Jose), Cryptography Research, Inc. (San Francisco), Hewlett-Packard Company (Palo Alto), Intel Corp. (Santa Clara), InterTrust Technologies Corp. (Sunnyvale), Macrovision Corp. (Sunnyvale), Sun Microsystems, Inc. (Mountain View; acquired by Northern California-based Oracle Corp. in 2010), and Stanford University (Stanford).

6. The following are prior art inventors listed as residing in the Northern District of California in the patents identified in **Exhibits 2 and 3**: Gilles Boccon-Gibod (Los Altos), William Macy (Palo Alto), Minerva Ming-Yee Yeung (Sunnyvale), Paul Kocher (San Francisco), Paul Wehrenberg (Palo Alto), Martin Hellman (Stanford), Ralph Merkle (Palo Alto), Bailey Diffie (Berkeley), Mark Stefik (Woodside), Michalene Casey (Morgan Hill), Robert Lu

(Sunnyvale), Boon-Lock Yeo (Sunnyvale), Todd Collart (Los Altos), Jean Laroche (Santa Cruz), Daniel Ullum (San Jose), Thomas Edsall (Mountain View), Soei-Shin Hang (Sunnyvale), Derek Nelson (Menlo Park), Glen Petrie (Los Gatos), Nicholas Briggs (Palo Alto), Norman Hardy (Portola Valley), Eric Hill (Palo Alto), David Van Wie (Sunnyvale), and James Barton (Los Gatos).

7. Attached hereto as **Exhibit 4** is a true and correct copy of an inventor declaration filed in the prosecution of the '181 Application on December 12, 2000.

8. Attached hereto as **Exhibit 5** is a true and correct copy of a Revocation of Power of Attorney filed in the prosecution of the '181 Application on March 31, 2005.

9. Attached hereto as **Exhibit 6** are true and correct copies of communications exchanged between Mr. Moskowitz and the Patent Office during the prosecution of the '181 Application.

10. Attached hereto as **Exhibit 7** are true and correct copies of communications exchanged between Mr. Moskowitz and the Patent Office during the prosecution of U.S. Patent Application Serial No. 12/005,229.

11. Attached hereto as **Exhibit 8** are true and correct copies of communications exchanged between Mr. Moskowitz and the Patent Office during the prosecution of U.S. Patent Application Serial No. 12/655,357.

12. Attached hereto as **Exhibit 9** is a true and correct copy of an inventor declaration filed in the prosecution of U.S. Patent Application Serial No. 13/035,964 on February 18, 2011.

13. Attached hereto as **Exhibit 10** is a true and correct copy of the face sheets to U.S. Patent No. 8,238,553, U.S. Patent Application Publication No. 2012/0209955, U.S. Patent No. 8,265,278, U.S. Patent Application Publication No. 2012/0239686, U.S. Patent No. 8,281,140, U.S. Patent No. 8,307,213, U.S. Patent Application Publication No. 2012/0300928, U.S. Patent Application Publication No. 2012/0278627, U.S. Patent Application Publication No. 2013/0030938, and U.S. Patent Application Publication No. 2013/0014271.

14. Attached hereto as **Exhibit 11** is a true and correct copy of the Florida

Department of State's Detail by Entity Name for Wistaria Trading Inc., as it appeared on the website <http://www.sunbiz.org> on August 1, 2013.

15. Attached hereto as **Exhibit 12** is a true and correct copy of the Florida Department of State's Detail by Document Number for Blue Spike, Inc., as it appeared on the website <http://www.sunbiz.org> on August 1, 2013.

16. Attached hereto as **Exhibit 13** is a true and correct copy of the Florida Department of State's Detail by Officer/Registered Agent Name for Canopus Medical, LLC, as it appeared on the website <http://www.sunbiz.org> on August 1, 2013.

17. Attached hereto as **Exhibit 14** is a true and correct copy of Wistaria Trading Inc.'s 2013 Florida Profit Corporation Annual Report filed with Florida's Secretary of State on January 20, 2013.

18. Attached hereto as **Exhibit 15** is a true and correct copy of Blue Spike, Inc's 2013 Florida Profit Corporation Annual Report filed with Florida's Secretary of State on January 20, 2013.

19. Attached hereto as **Exhibit 16** is a true and correct copy of the LinkedIn profile for Scott Moskowitz, as it appeared on February 4, 2014.

20. Attached hereto as **Exhibit 17** is a true and correct copy of a LexisNexis Real Time Motor Vehicle Registration Report for Scott Moskowitz, dated February 4, 2014.

21. Attached hereto as **Exhibit 18** is a true and correct copy of a Westlaw Voter Registration Record for Scott Moskowitz, obtained on February 4, 2014.

22. Attached hereto as **Exhibit 19** is a true and correct copy of excerpts of Florida's election laws for 2012, obtained from the website of the Florida Division of Elections, <http://election.dos.state.fl.us/rules>.

23. Attached hereto as **Exhibit 20** is a true and correct copy of the website page for the Chilton Grand Bed and Breakfast Establishment, located at 433 S. Chilton Avenue, Tyler, Texas 75702.

24. Attached hereto as **Exhibit 21** are true and correct copies of Assignments of U.S.

Patent Application Serial Nos. 09/657,181, 12/655,357 and 12/005,229 from Messrs. Moskowitz and Berry to Blue, Spike, Inc.

25. Attached hereto as **Exhibit 22** is a true and correct copy of the Articles of Organization of Blue Spike LLC, filed with the Secretary of State of Texas on May 14, 2012.

26. Attached hereto as **Exhibit 23** is a true and correct copy of the Patent Assignment Details for the Asserted Patents, which was recorded on August 5, 2012, as it appeared on the Patent and Trademark Office's website on August 2, 2013.

27. Attached hereto as **Exhibit 24** is a true and correct of "Table C-5. U.S. District Courts—Median Time Intervals From Filing to Disposition of Civil Cases Terminated, by District and Method of Disposition, During the 12-Month Period Ending March 31, 2013," which is part of the Judicial Business of the U.S. Courts.

28. Attached hereto as **Exhibit 25** is a true and correct copy of U.S. Patent No. 6,834,308.

29. Attached hereto as **Exhibit 26** is a true and correct screen capture of a post on Scott Moskowitz's Google+ profile, dated July 25, 2012, with a geo-tag location of Pack Rat Shipping Services, 3110 Magazine Street, New Orleans, LA, United States. An electronic version of this exhibit was available at <https://plus.google.com/100050865204619779314/posts/fynyeJa9oSr#100050865204619779314/posts/fynyeJa9oSr>, on February 5, 2014.

30. Attached hereto as **Exhibit 27** is a true and correct screen capture of a post on Scott Moskowitz's Google+ profile, dated July 29, 2012, with geo-tag location information of E Las Olas, Fort Lauderdale, Florida. An electronic version of this exhibit was available at <https://plus.google.com/100050865204619779314/posts/87rYT6mer9i>, on February 5, 2014.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed in San Francisco, California this 4th day of February, 2014

/s/Bryan Kohm
Bryan Kohm